

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

December 2, 2008

TO: Internal File

THRU: Steve Christensen, Environmental Scientist II, Team Lead *SC*

FROM: Priscilla Burton, CPSSc, Environmental Scientist III. *pwb mjs*

SUBJECT: Wellington Dry-Coal Cleaning Facility Application, Headwaters, Incorporated, Coval, Permit C/0070045, Task ID #3075

SUMMARY:

The permit application package was updated on October 15, 2008 (response to deficiencies) and with supplemental bond calculations received on October 30, 2008.

The following deficiencies were previously identified with information reviewed as 2899 and have not yet been resolved:

R645-301-112.300, AVS information indicates that Earnest Partners is a 10% owner of Headwaters Incorporated and this fact must be disclosed in the organizational structure Figure 1-1 and officers and directorship information for Earnest Partners must be disclosed along with all other requirements of R645-301-112.300 *et seq.*

R645-301-112.340, Table 1-1 does not match the AVS listing of permits held by COVOL Fuels No. 2, LLC, which indicates that Kentucky permit #889-8004 is held by the company. •The application must disclose employer identification numbers and MSHA numbers (with date of issuance) for all sites controlled by Covol Engineered Fuels, LC and affiliates: Covol Fuels No 2 LLC, Covol Fuels No 3 LLC, Covol Fuels No 4 LLC, Covol Fuels No 5 LLC, within the last five years.

R645-301-112.400, For all coal mining and reclamation operations controlled by the applicant, Covol Engineered Fuels, LC., the application must provide the names, addresses, employer identification numbers, and MSHA numbers with date of issuance.

R645-301-118, Provide documentation of filing fee payment.

R645-301-220, Figure 2-1, Soil map must provide accurate elevations (two lines have the same elevation).

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R645-301-142: Section 1.40 of the application states that the entire 30 acre permit area was developed by the time of permit application, January 15, 2008, as illustrated on Plate 5-2, Reclamation Map. However, photographs taken during an August 13, 2008 courtesy site visit illustrate that there are islands of undisturbed vegetation west of the office, south of the west topsoil stockpile, and along the south fence line. The application must indicate on a map the portion of the operation developed prior to the permit application dated January 15, 2008 and that remaining within the permit area, as yet undisturbed.

The following deficiencies were noted with review of Task 3075:

R645-301-113.300 *et seq*, The application must provide a listing of violations received by the Applicant and affiliated companies at all permitted coal mining and reclamation sites in the last three years.

R645-301-112.600, Section 1.1.2.6 provides surface ownership information. Appendix 1-3 includes a copy of a portion of the plat map for T. 15 S, R. 10 E. Section 14 that shows adjacent surface ownership, however several contiguous surface owners on the Plat have not been included in the listing of Section 1.1.2.6. Please verify the surface ownership listing against a current Plat and make any appropriate changes.

R645-301-121.100, Table 1-1 does not match the AVS listing of permits held by Covol Fuels No. 2, LLC, which indicates that Kentucky permit #889-8004 is under the control of Covol Fuels No. 2, LLC.

R645-301-121.200, The statement in Section 1.4 that "the entire permit area was developed at the time of permit application, January 15, 2008" appears to conflict with the statement made in Section 2.2.2 that "soil will be sampled prior future disturbance in any undisturbed areas of the site." Please verify COVOL's intentions to sample and analyze soils for baseline information, prior to future construction or other earth moving disturbance on lands within the within the permit area (see also deficiency written under R645-301-142).

R645-301-231.400, Section 2.3.1.4 indicates that the topsoil that was salvaged and stockpiled three years ago, may not be seeded until the spring of 2008. The Division requests that the topsoil stockpiles are seeded immediately with the seed mix listed in Table 3.1. Do not delay. A winter seeding is imperative to take advantage of the moisture and temperature stratification required for the seed to break through the seed coat and the increased soil moisture for seed germination and growth at the most opportune temperatures in the spring. Seeding when the weather warms in the spring will likely miss this window of opportunity. Seeding of open stockpiles is required promptly, as COVOL has noted in Section 2.3.4.2.

R645-301-553.100 and R645-301-356.240, The plan indicates that the site will be left for an uncertain industrial use. The Applicant should either demonstrate a need for or describe within the narrative and on Plate 5-2 the reclamation of all ramps and drop structures, ditches and sediment ponds. The reclamation plan should describe seeding of the industrial site that is sufficient to control erosion, in accordance with the industrial post mining land use success standard.

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HISTORICAL SUMMARY:

The Headwaters, Inc. Wellington Dry Coal Cleaning Facility has been in operation since January 2006 (Section 1.1.1). The permit application package was received on January 15, 2008. The permitting chronology is as follows:

- Division determination to permit dated March 17, 2006. (M:\FILES\COAL\PERMITS\007\C0070045\2006\OUTGOING\0001.pdf).
- COVOL appeal of decision to permit May 12, 2006 (2006/Incoming\0001 and 0003.pdf).
- Stipulation and Joint Motion for Continuance, dated October 20, 2006, refers to settlement agreement to be set forth at a later date (M:\OGMBOARD\Mining\C-007-045/ C-007-045_2006-p011.pdf).
- Order for Continuance dated October 25, 2006, suspending action before the Board until further notice (M:\OGMBOARD\Mining\C-007-045/C-007-045_2006-o009.pdf).

The settlement agreement is not part of the Board file record or the Coal Program records. Steve Alder provided a copy of the [preliminary] settlement negotiations to the Coal Program during a meeting on June 13, 2008. The settlement negotiations letter is dated October 19, 2006, and is in the form of a letter from Steve Alder, Attorney for Division of Oil, Gas & Mining to Craig D. Galli, Attorney for COVOL. The subject line indicates "RE:Settlement Negotiations between COVOL Engineered Fuels, LLC and the Division of Oil, Gas & Mining."

The October 20, 2006 settlement negotiations letter states the premise for the technical review, but acknowledges a formal settlement agreement will follow. The following information provides a status report on the five actions to be taken by COVOL and the DIVISION, as stated in the settlement negotiations letter.

- 1) COVOL would complete an environmental audit of the COVOL site and share the background data with the Division. The environmental audit was provided to the Division, separately from the application. It is found in M:\FILES\COAL\PERMITS\007\C0070045\2006\INCOMING\11152006.
- 2) COVOL would provide a rough outline of an expected permit with an industrial post mining land use. The rough outline was received December 22, 2006, and filed at a later date, see M:\FILES\COAL\PERMITS\007\C0070045\2007\INCOMING\0005.pdf.
- 3) COVOL and the Division would take advantage of environmental information provided in adjacent permits. The Environmental Compliance Assessment is included in the PAP as Appendix 1-2.

4) Division would evaluate the proposed permit outline and provide feedback. The rough outline was reviewed on March 13, 2007, see

M:\FILES\COAL\PERMITS\007\C0070045\2007\OUTGOING\0002.pdf.

5) Once the outline was reviewed, a formal settlement agreement would be entered into and dismissal of the case before the Board would be sought. Status: pending, however, the Agreement to Conclude Permit and to Continue Operations, dated September 15, 2008 makes progress towards the settlement (2008\Incoming\0014.doc)

TECHNICAL ANALYSIS:

GENERAL CONTENTS

IDENTIFICATION OF INTERESTS

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

Analysis:

Section 1.1.2.2 identifies the applicant and operator as COVOL Engineered Fuels, LC. (COVOL). The federal ID numbers and list of officers and directors for the applicant, and parent entities, Headwaters Energy Services Corporation, and Headwaters Inc. are provided. A note indicates that the addresses and phone numbers for both parent entities are the same as the West Jordan address of the applicant. The ownership and control relationship is illustrated on Figure 1-1. The AVS system corroborates that the all Headwater Energy Services Corp. derivative companies are headquartered in Utah, as indicated in Figure 1-1. AVS information indicates that Earnest Partners is a 10% owner of Headwaters Incorporated and this fact must be disclosed in the organizational structure and officers and directorship information for Earnest Partners must be disclosed along with all other requirements of R645-301-112.300 *et seq.*

Gina Rao, Environmental Manager for Headwaters, Inc., has also been identified as the contact for the applicant, COVOL. However, Section 1.1.2.2 specifies that the President and Manager of COVOL, Kenneth R. Frailey, will be responsible for payment of the Abandoned Mine Land fee. The Division understands that COVOL Engineered Fuels, LC is not responsible for AML fees on material received from Savage Services Corp. (see January 2, 2008 letter from Jennifer Smith, OSM, to Commonwealth Coal Services of Virginia.). An OSM inspection report (2008/Incoming/0003.pdf) indicates that R.O.M. coal is a source of raw material. In this case, the coal mine would have already paid the royalty on the R.O.M. coal. As the source of raw material continually changes, the Applicant should document all communication with OSM concerning AML fees.

Table 1-1 lists permitted sites under the control of Headwaters, Inc. The applicant, COVOL, has four permitted sites in Alabama and one in Indiana. Related entities under the

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control of Headwaters nine additional permits in Kentucky, West Virginia and Alabama.

Section 1.1.2.6 provides surface ownership information. Appendix 1-3 includes a copy of a portion of the plat map for T. 15 S, R. 10 E. Section 14 that shows adjacent surface ownership, however several contiguous surface owner on the Plat have not been included in the listing of Section 1.1.2.6. Please verify the surface ownership listing against a current Plat and make any appropriate changes. Subsurface ownership is not identified, because no subsurface activity will occur. The applicant has stated no interest in contiguous lands.

The site has MSHA ID#42-02398 (as stated in Section 1.1.2.7).

Table 1-1 provides a listing of permits held by the Applicant and affiliates. Table 1-1 does not match the AVS listing of permits held by COVOL Fuels No. 2, LLC, which indicates that Kentucky permit #889-8004 is held by the company. The application must disclose employer identification numbers and MSHA numbers (with date of issuance) for all sites controlled by the Applicant, Covol Engineered Fuels, LC, and affiliates: Covol Fuels No 2 LLC, Covol Fuels No 3 LLC, Covol Fuels No 4 LLC, Covol Fuels No 5 LLC, within the last five years.

Findings:

The information provided does not meet the requirements of Identification of Interests.

R645-301-112.300, AVS information indicates that Earnest Partners is a 10% owner of Headwaters Incorporated and this fact must be disclosed in the organizational structure Figure 1-1 and officers and directorship information for Earnest Partners must be disclosed along with all other requirements of R645-301-112.300 *et seq.*

R645-301-121.100, Table 1-1 does not match the AVS listing of permits held by Covol Fuels No. 2, LLC, which indicates that Kentucky permit #889-8004 is under the control of Covol Fuels No. 2, LLC. •The application must disclose employer identification numbers and MSHA numbers (with date of issuance) for all sites controlled by Covol Engineered Fuels, LC and affiliates: Covol Fuels No 2 LLC, Covol Fuels No 3 LLC, Covol Fuels No 4 LLC, Covol Fuels No 5 LLC, within the last five years.

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R645-301-112.600, Section 1.1.2.6 provides surface ownership information. Appendix 1-3 includes a copy of a portion of the plat map for T. 15 S, R. 10 E. Section 14 that shows adjacent surface ownership, however several contiguous surface owners on the Plat have not been included in the listing of Section 1.1.2.6. Please verify the surface ownership listing against a current Plat and make any appropriate changes.

VIOLATION INFORMATION

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

Analysis:

A listing of violations received by the Applicant and affiliated companies at all permitted coal mining and reclamation sites across the country was not received., but is required by R645-301-113.300.

In accordance with R645-301-113.100, the application includes a statement that neither the Applicant nor its major stockholders have had a permit suspended or bond forfeited. The application was verified by the notarized signature of Keith Thompson, President of Covol Engineered Fuels, LC.

No outstanding violations or unresolved compliance issues were reported for the company or its affiliates (Section 1.1.3). This fact was confirmed by an entity evaluation conducted through OSM's Applicant Violator System on March 13, 2008 and November 26, 2008.

Findings:

The information provided meets the requirements of the Coal Rules. However, the following issue must be reconciled prior to permit issuance:

R645-301-113.300 *et seq.* The application must provide a listing of violations received by the Applicant and affiliated companies at all permitted coal mining and reclamation sites in the last three years.

RIGHT OF ENTRY

Regulatory Reference: 30 CFR 778.15; R645-301-114

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Analysis:

The applicant is the surface landowner (Section 1.1.4). Thirty acres is owned by COVOL Engineered Fuels, LC (Sec. 1.1.2 and 1.1.2.5). Appendix 1-3 provides warranty deeds showing a ten acre parcel was purchased from Price City in 2003 by Terra Systems and transferred to Covol Engineered Fuels, LC in 2005. A twenty acre parcel was purchased in 2005 from Price City by COVOL Engineered Fuels, Inc. On both parcels, underground oil and gas and mineral rights were retained by Price City.

Findings:

Information provided meets the requirements of the Coal Rules.

LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; R645-301-115.

Analysis:

The thirty acre facility is located in Sec. 14, T 15 S, R 10 E, 2 miles west of Wellington city limits, in Carbon County. A more precise description is found in the Reclamation Agreement (M:\FILES\COAL\PERMITS\007\C0070045\2007\INCOMING\0012.pdf).

According to title insurance documents in Appendix 1-3, the site is "within the boundaries of the Price River Water Improvement District which has been assigned to Miller Creek Water Special Service District..."

The site is located in an area that has an industrial zoning by the County. There is no unsuitability issue.

Findings:

The information provided meets the requirements of the Coal Rules.

PERMIT TERM

Regulatory References: 30 CFR 778.17; R645-301-116.

Analysis:

The permit term is five years, beginning 2008.

Findings:

The information provided meets the requirements of the Coal Rules.

PUBLIC NOTICE AND COMMENT

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

Analysis:

Liability insurance is found in Appendix 8-1. The insurance is carried by the parent company Headwaters Incorporated and covers the permitted site. There is no blasting coverage (and no blasting will be conducted at the site, see 2007/Incoming/0014.pdf.

Public notice of the permitting action was published in the Sun Advocate on March 18, 25, April 1, and April 8, 2008. No public comments were received. Ad affidavit of publication is included in Appendix 1-4 of the application.

Findings:

The information provided meets the requirements of the Utah Coal Rules.

FILING FEE

Regulatory Reference: 30 CFR 777.17; R645-301-118.

Analysis:

Division files do not show any record of collecting a filing fee at the time of application submittal (Section 1.1.8).

Findings:

R645-301-118, Provide documentation of filing fee payment.

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PERMIT APPLICATION FORMAT AND CONTENTS

Regulatory Reference: 30 CFR 777.11; R645-301-120.

Analysis:

The Division determined in 2004 that the COVOL operation would not likely be permitted (PAP, App. 1-1). This 2004 determination is not in the coal program files for the C/007/0045 site. The determination to permit the site was made on March 17, 2006, after much of the site had been developed without the collection of background environmental data.

The Headwaters, Inc. Wellington Dry Coal Cleaning Facility has been in operation since January 2006 (Section 1.1.1). The application for permit was received on January 15, 2008. The permitting chronology is as follows

- Division determination to permit dated March 17, 2006. (M:\FILES\COAL\PERMITS\007\C0070045\2006\OUTGOING\0001.pdf).
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The settlement negotiations are not part of the Board file record or the Coal Program records but is included in the PAP, Appendix 1-1. Steve Alder provided a copy of the [preliminary] settlement negotiations to the Coal Program during a meeting on June 13, 2008. The settlement negotiations letter is dated October 20, 2006, and is in the form of a letter from Steve Alder, Attorney for Division of Oil, Gas & Mining to Craig D. Galli, Attorney for COVOL. The subject line indicates "RE:Settlement Negotiations between COVOL Engineered Fuels, LLC and the Division of Oil, Gas & Mining."

The October 20, 2006 settlement negotiations letter states the premise for the technical review. The application follows a format prescribed by the October 20, 2006 [preliminary] settlement negotiations letter that indicates in item 6 that a formal settlement agreement will follow. An Agreement to Conclude Permit and to Continue Operations, dated September 15, 2008 (2008/Incoming\0014.doc) makes progress towards the formal settlement and dismissal of the Board action.

Appendix 1-2 provides the Environmental Compliance Report described in item #3 of the October 20, 2006 settlement negotiations letter.

Findings:

The information provided meets the requirements of the October 20, 2006 Settlement Negotiations letter.

REPORTING OF TECHNICAL DATA

Regulatory Reference: 30 CFR 777.13; R645-301-130.

Analysis:

Environmental audit information has been accompanied by names of persons, dates and descriptions of methodology.

Findings:

The information provided meets the requirements of the Coal Rules.

MAPS AND PLANS

Regulatory Reference: 30 CFR 777.14; R645-301-140.

Analysis:

Maps include the types of information set forth on USGS 1:24,000 series maps. Maps of the permit area are of a scale of 1:6,000 minimum.

There was no coal mining conducted prior to August 1977. However, the applicant was allowed to develop the site without a permit (letter from Mary Ann Wright to W. Layne Ashton, COVOL Engineered Fuels, LC, September 13, 2004, see Appendix 1-1); and had done some site development by June 15, 2005 (Inspection Report #639, filed in General/2006/Incoming).

The 10 acre parcel had been fully developed, but not the additional 20 acres to the south by the time the decision to permit was reached March 17, 2006 (M:\FILES\COAL\PERMITS\007\C0070045\2006\OUTGOING\0001.pdf), and the appeal of the decision had been filed May 12, 2006 (2006/Incoming/0001 and 0003.pdf), and the two parties agreed to settlement October 20, 2006 (see App. 1-1).

Section 1.40 of the application states that the entire 30 acre permit area was developed by the time of permit application, January 15, 2008, as illustrated on Plate 5-2, Reclamation Map.

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Photographs taken during an August 13, 2008 courtesy site visit illustrate that there are islands of undisturbed vegetation west of the office, south of the west topsoil stockpile, and along the south fence line.

Findings:

The information provided does not meet the requirements of the Utah Coal Rules and the October 20, 2006 Settlement Negotiations letter. Prior to approval, provide the following in accordance with:

R645-301-142: Section 1.40 of the application states that the entire 30 acre permit area was developed by the time of permit application, January 15, 2008, as illustrated on Plate 5-2, Reclamation Map. However, photographs taken during an August 13, 2008 courtesy site visit illustrate that there are islands of undisturbed vegetation west of the office, south of the west topsoil stockpile, and along the south fence line. The application must indicate on a map the portion of the operation developed prior to the permit application dated January 15, 2008 and that remaining within the permit area, as yet undisturbed.

COMPLETENESS

Regulatory Reference: 30 CFR 777.15; R645-301-150.

Analysis:

The application was determined complete on March 14, 2008 (M:\FILES\COAL\PERMITS\007\C0070045\2008\OUTGOING). The Division has one year to review and either permit or deny the application. Some technical deficiencies were identified on the Apparent Completeness Review form. The first deficiency letter was mailed July 10, 2008. The COVOL permitting agreement was signed on September 15, 2008 (2008\Incoming\0014.doc) and responses to deficiencies were received on October 15, 2008. The Division review date for this round is December 8, 2008.

Findings:

The information provided meets the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008.

ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

SOILS RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.21; 30 CFR 817.22; 30 CFR 817.200(c); 30 CFR 823; R645-301-220; R645-301-411.

Analysis:

Per Division/COVOL Engineered Fuels, LC agreement, the application relies upon published soil survey information for that portion of the site that has been disturbed by the operations to date, see: M:\FILES\COAL\PERMITS\007\C0070045\2007\INCOMING\0005.pdf and M:\FILES\COAL\PERMITS\007\C0070045\2007\OUTGOING\0008.pdf.

Sec. 2.2 states elevation of 5,530 ft. Figure 2-1, Soil Map indicates Map Unit 80 Persayo/Chipeta complex and Map Unit 59 Killpack Clay Loam based on 1988 Carbon County Soil Survey. Appendix 2-2 provides map unit information from the Carbon County Soil Survey. Appendix 2-1 has photographs of the site prior to disturbance, in lieu of site specific survey information.

Plate 5-2 illustrates the site development at the time of permit application and indicates that ten acres (to the south) have been only marginally disturbed by two sediment ponds. The statement in Section 1.4 that "the entire permit area was developed at the time of permit application, January 15, 2008" conflicts with the statement made in Section 2.2.2 that "soil will be sampled prior future disturbance in any undisturbed areas of the site." Please verify COVOL's intentions to sample soils prior to future disturbance within the permit area.

Findings:

The information provided does not meet the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008. Prior to approval, please provide the following in accordance with:

R645-301-121.200, The statement in Section 1.4 that "the entire permit area was developed at the time of permit application, January 15, 2008" appears to conflict with the statement made in Section 2.2.2 that "soil will be sampled prior future disturbance in any undisturbed areas of the site." Please verify COVOL's intentions to sample and analyze soils for baseline information, prior to future

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construction or other earth moving disturbance on lands within the within the permit area (see also deficiency written under R645-301-142).

R645-301-220, Figure 2-1, Soil map must provide accurate elevations. Soil Map shows two elevation lines with the same elevation.

LAND-USE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.22; R645-301-411.

Analysis:

The land is zoned for industrial use, Figure 4-1. The site will be reclaimed for industrial use.

Findings:

The information provided meets the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008.

PRIME FARMLAND

Regulatory Reference: 30 CFR 785.16, 823; R645-301-221, -302-270.

Analysis:

The application correctly states there is no farmland on the ridge where the site is located, see M:\FILES\COAL\PERMITS\007\C0070045\2007\INCOMING\0005.pdf and M:\FILES\COAL\PERMITS\007\C0070045\2007\OUTGOING\0008.pdf.

Prime Farmland and Farmland of Statewide Importance was designated (by the USDA) along the Miller Creek drainage to the south and along the Price River drainage to the north [Utah Agricultural Exp. Sta. Res. Rpt. #76].

1979 USDA aerial photos show an irrigation canal running through the property and agricultural land immediately to the west. This irrigation canal has since been abandoned.

Findings:

The Division determined extent of investigation in accordance with R645-302-313, and finds that there is no prime farmland within the permit area.

OPERATION PLAN

AIR POLLUTION CONTROL PLAN

Regulatory Reference: 30 CFR 784.26, 817.95; R645-301-244, -301-420.

Analysis:

June 30, 2005 DAQE-AN2952003-05 issued to COVOL Engineered Fuels, LC in App. 4-2, allows process of 1.5 million tons of coal over 12 month period. Equipment: one crusher, one screen, two hoppers, 3 air tables, 3 fabric filter baghouses treating exhaust air from air tables, covered or enclosed conveyors, telescoping discharge tubes. one 200 ton storage silo. Opacity from screens conveyor transfer and baghouse stacks to be 10%, Crushers are allowed 15% opacity. Dust control on operational areas by water sprays Haulroad paved (0.69 miles).

Headwaters Energy Service notified the Division of Air Quality of the initiation of construction on August 5, 2005, in accordance with DAQE-AN2952003-05 (see Appendix 1-2, Exhibit 2 or M:\FILES\COAL\PERMITS\007\C0070045\2006\INCOMING\11152006). The same letter notes that once construction has been completed and initial startup takes place, the required notification will be made. A second letter, dated February 2006, indicates that the annual emission inventory for the facility was not required because the facility was still under construction and production had not yet taken place (Environmental Audit in Appendix 1-2, Exhibit 2). The February 2006 letter promises notification of the onset of production.

Appendix 4-2 includes a letter dated November 21, 2006, notifying the DEQ that construction was completed, but paving the roads would not be completed within the 18 month time frame required by the AO.

The diagrams provided to acquire an air quality permit provide the most information on the site process (see Appendix 1-2 or M:\FILES\COAL\PERMITS\007\C0070045\2006\INCOMING\11152006).

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Findings:

The information provided meets the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008.

TOPSOIL AND SUBSOIL

Regulatory Reference: 30 CFR Sec. 817.22; R645-301-230.

Analysis:

Topsoil Removal and Storage

Section 2.3.1.4 indicates that two topsoil stockpiles were constructed in August 2005. Approximately 500 cu. yd. soil is contained in these two stockpiles. The stockpiles are marked and will be (but are not currently) protected by a silt fence.

Section 2.3.1.4 indicates that the topsoil will be seeded in the fall of 2008 or the spring of 2009. Section 2.3.4.2 indicates the vegetation establishment will be prompt. The topsoil was salvaged and stockpiled in 2005. Do not delay any further. Seed the topsoil stockpiles with the seed mix listed in Table 3.1 immediately. A winter seeding is imperative to take advantage of the moisture and temperature stratification required to for the seed to break through the seed coat and the increased soil moisture for seed germination and growth at the most opportune temperatures in the spring. Seeding when the weather warms in the spring will likely miss this window of opportunity.

Findings:

The information provided does not meet the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008. Prior to approval, the Permittee must provide the following information:

R645-301-231.400, Section 2.3.1.4 indicates that the topsoil which was salvaged and stockpiled three years ago, may not be seeded until the spring of 2008. The Division requests that the topsoil stockpiles are seeded IMMEDIATELY with the seed mix listed in Table 3.1. Do not delay. A winter seeding is imperative to take advantage of the moisture and temperature stratification required for the seed to break through the seed coat and the increased soil moisture for seed germination and growth at the most opportune temperatures in the spring. Seeding when the weather warms in the spring will likely miss this window of opportunity. Seeding

of open stockpiles is required promptly, as COVOL has noted in Section 2.3.4.2. of the application.

RECLAMATION PLAN

POSTMINING LAND USES

Regulatory Reference: 30 CFR Sec. 784.15, 784.200, 785.16, 817.133; R645-301-412, -301-413, -301-414, -302-270, -302-271, -302-272, -302-273, -302-274, -302-275.

Analysis:

Reclamation will support industrial land use (Sec. 4.1.2.1 and Figure 4-1.) Section 4.1.3.2 states an unknown industrial post mining landuse, in conformance with the adjacent properties and the zoning. [photographs accompanying DOGM Inspection Rpt. #639, dated June 15, 2005 illustrate condition of land just as operation was beginning.]

Findings:

The information provided meets the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008.

TOPSOIL AND SUBSOIL

Regulatory Reference: 30 CFR Sec. 817.22; R645-301-240.

Analysis:

Redistribution

Sec. 2.40 states limited replacement of soil in (unspecified) areas to facilitate the industrial post mining land use.

Due to high clays and sodicity, grading work and chiseling will be done when the soil is dry (Section 2.4.2.1).

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Findings:

The information provided meets the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008.

STABILIZATION OF SURFACE AREAS

Regulatory Reference: 30 CFR Sec. 817.95; R645-301-244.

Analysis:

Broadcast seeding is described in Sec. 3.40. The final seed mixture is the same as that used on the topsoil stockpile (Table 3-1). Plate 5-2 illustrates the location of topsoil distribution and the grading of the site at final reclamation. This plate suggests that the loadout ramp, the dump bin road, and the sediment ponds will remain. The plan indicates that the site will be left for an uncertain industrial use. To prepare for any eventuality, Plate 5-2 must show that the site must be graded to remove all ramps and drop structures and sediment ponds and the site must be seeded to control erosion.

Findings:

The information provided does not meet the requirements of the Coal Rules and the settlement negotiation dated October 20, 2008. Prior to approval, the application must include the following, in accordance with:

R645-301-553.100 and R645-301-356.240, The plan indicates that the site will be left for an uncertain industrial use. The Applicant should either demonstrate a need for or describe within the narrative and on Plate 5-2 the reclamation of all ramps and drop structures, ditches and sediment ponds. The reclamation plan should describe seeding of the industrial site that is sufficient to control erosion, in accordance with the industrial post mining land use success standard.

RECOMMENDATIONS:

Prior to approval of this permit application, all information identified as deficient in the application must be provided.